



DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 390

[Docket Number FSIS-2019-0012]

RIN 0583-AD82

Privacy Act Exemption for AssuranceNet

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to exempt certain records maintained by its AssuranceNet (ANet) system of records from the notification and access provisions of Privacy Act of 1974 (Privacy Act). FSIS is proposing these exemptions because the information in the SORN is directly associated with investigations conducted by FSIS for law enforcement purposes. A notice of system of records for USDA/FSIS-0005, AssuranceNet (ANet) is also published in this issue of the **Federal Register**.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- **Hand- or courier-delivered submittals:** Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2019-0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202)720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Scott Safian, AssuranceNet System Owner/Manager, Enforcement and Litigation Division,

Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, 355 E Street, SW, Room 8-205, Washington, DC 20024, (202) 418-8872.

FOR PRIVACY Questions: Privacy Office, Office of the Chief Information Officer, USDA, 1400 Independence Ave., S.W., Room 0055, Washington, DC, 20250; Telephone 202-619-8503.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. ANet is a management control and performance monitoring system that gathers information from electronic and paper-based sources to enable FSIS to track, measure, and monitor the performance of its and its state partners' critical public health functions and to alert FSIS management to areas of vulnerability or concern. ANet tracks, measures, and monitors the performance of the key public health functions of inspection, verification, surveillance, enforcement, and sampling by FSIS and state meat and poultry inspection program employees. The data and tools of ANet are used to analyze the effectiveness of policies and procedures in meeting public health goals and objectives and to help ensure that methods, evaluations, and enforcement are standardized and traceable nationwide. The Agency also uses data analysis in and through ANet to discern trends; to develop objectives for

regulatory food safety functions; to identify and focus on areas of high-risk; and to help determine strategies to combat threats to food safety and defense.

FSIS is proposing to exempt investigatory material, compiled and maintained by ANet for law enforcement purposes, from certain provisions of the Privacy Act.

Privacy Act

The Privacy Act of 1974, 5 U.S.C. § 552a, governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in a system of records. A system of records is a group of records under the control of an agency from which information is retrieved by the individual's name or some other personal identifier assigned to that individual. The Privacy Act requires agencies to publish a system of records notice (SORN) for every system of records that it maintains. A SORN informs the public of the existence of a system of records and describes the type of information collected, why it is being collected, what it may be used for, when it may be disclosed to third parties, how it will be safeguarded, and how and when it will be destroyed. A notice of system of records for USDA/FSIS-0005, AssuranceNet (ANet) is also published in this issue of the **Federal Register**. A Privacy Impact Assessment is posted on <https://www.usda.gov/home/privacy-policy/privacy-impact-assessments>.

An Agency that wants to exempt portions of some systems of records from certain provisions of the Privacy Act must promulgate regulations to notify the public and explain the reasons why a particular exemption is claimed. FSIS is proposing to exempt certain investigatory records maintained by the ANet system of records from the notification and access provisions of the Privacy Act under 5 U.S.C. 552a(c)(3), (d)(1)-(4), (e)(1)(e)(4)(G)-(I), and (f). Specifically, ANet includes investigatory material compiled for law enforcement, which fall under the Privacy Act exemptions 5 U.S.C. 552a(k). FSIS is proposing these exemptions because the information contained in the SORN is directly associated with investigations conducted by FSIS for law enforcement purposes. The proposed exemptions would protect the information on the methods used in law enforcement activities from those individuals who are subjects to the investigation and the identities and physical safety of witnesses and others who aid in investigations. In addition, the exemptions ensure FSIS's ability to obtain information from third parties and safeguards those investigatory records that are needed for litigation.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety benefits, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. FSIS anticipates no costs or benefits accruing from this proposal.

Executive Order 13175

This proposed rule will have no implications for Indian Tribal governments. More Specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are

prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400

Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

List of Subjects in 9 CFR part 390

Freedom of Information, Privacy.

For the reasons stated in the preamble, FSIS is proposing to amend 9 CFR part 390 as follows:

1. Revise the authority citation for part 390 to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 21 U.S.C. 451-472, 601-695; 7 CFR 1.3, 2.7.

2. Add § 390.11 to read as follows:

§ 390.11 FSIS systems of records exempt from the Privacy Act.

(a) The USDA/FSIS-0005, AssuranceNet system of records is exempt from subsections (c)(3), (d)(1)-(4), (e)(1), (e)(4)(G)-(I), and (f) of the Privacy Act, 5 U.S.C. 552a, to the extent it contains investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2). Exemptions from the particular subsections are justified for the following reasons:

- (1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.
- (2) From subsection (d)(1) because the records contained in this system relate to official federal investigations and matters of law enforcement. Individual access to these records

might compromise ongoing or impending investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

(3) From section (d) (2) because amendment of the records would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsections (d) (3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d) (1) and (2).

(5) From subsection (e) (1) it is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(6) From subsections (e) (4) (G) and (H) since an exemption being claimed for subsection (d) makes these subsections inapplicable.

(7) From subsection (e) (4) (I) because the categories of sources of the records in this system have been published in the Federal Register in broad generic terms in the belief that

this is all that subsection (e) (4) (I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of enforcement information and of witnesses and informants.

(8) From subsection (f) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Done in Washington, DC.

Paul Kiecker,
Administrator.